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## *House of Judah: The Problem of Child Abuse and Neglect in Communes and Cults*

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## HOUSE OF JUDAH: THE PROBLEM OF CHILD ABUSE AND NEGLECT IN COMMUNES AND CULTS

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On July 3, 1983 a woman beat to death her twelve-year-old son in their home at the House of Judah religious camp in Allegan, Michigan.<sup>1</sup> Following examination of the body,<sup>2</sup> police officials took the boy's five siblings into temporary custody in accordance with the emergency removal provisions of Michigan law.<sup>3</sup> At the preliminary hearing following emergency removal, the probate judge ruled not only that cause existed to justify continued temporary custody, but also that cause existed to investigate the welfare of *all* the children in the camp.<sup>4</sup> At the hearing, the statements and behavior of the camp's leader, Prophet Lewis, led the probate court to conclude that he was the "guardian" of all of the children in the camp.<sup>5</sup> Concerned that Prophet Lewis's professed belief in harsh physical punishment, together with his apparent influence over the parents' judgment and behavior, posed a threat to the safety of all the children, the court appointed a committee of physicians and social workers to visit the camp and examine the children residing there. Although the committee found evidence of physical abuse of only eleven of

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1. House of Judah is a 22-acre religious camp in Lacota, a small village in southwestern Michigan. Detroit Free Press, Aug. 28, 1983, at A3. The group has about one hundred members who call themselves the black Hebrew Israelite Jews. Detroit Free Press, July 9, 1983, at A1. The organization was founded in Chicago in 1966 by Prophet William Lewis, formerly an appliance repairman and barber. The group moved to its camp in Michigan in 1975. The camp consists of trailers and mobile homes, and each family lives and eats in its own trailer. *Id.* at A9. Most of the adults in the camp are women, Detroit Free Press, Aug. 28, 1983, at A12, and are unemployed, receiving welfare and Aid to Families with Dependent Children. Detroit Free Press, July 10, 1983, at A11.

2. The boy's body was taken to Douglas Hospital at about 6:00 a.m., July 4, 1983. The Allegan County medical examiner's report said that the boy died between midnight and 2:00 a.m. Detroit Free Press, July 10, 1983, at A1.

3. MICH. COMP. LAWS ANN. § 712A.15 (West Supp. 1985); MICH. JUV. CT. R. 2.1. See *infra* notes 10-11 and accompanying text.

4. *In re* Children of the House of Judah, File Nos. 2206-83 to 2210-83, at 50-51 (Preliminary Hearing, Allegan County P. & Juv. Ct., Mich., filed July 6, 1983) (portions of this hearing on file with U. MICH. J.L. REF.).

5. It is not clear what the court meant by naming Prophet Lewis "guardian" of the children. See *infra* text accompanying notes 109-11.

the sixty-six children,<sup>6</sup> the court took temporary custody of all sixty-six children.<sup>7</sup>

The court ordered placement of these children in foster homes in Allegan and surrounding counties, and social workers and psychologists evaluated them. The children remained in foster homes until the state reached an agreement with the parents by which all of the parents agreed to certain stipulations. In exchange for this agreement the state returned nearly all of the children.

In handling this case, the court and state agencies made certain modifications to their "ordinary" procedures. This Note argues that although some modifications were appropriate, state intervention and removal of children, even from a commune or cult, should be handled through examination of each individual parent/child relationship. Part I examines the statutory and case law framework for state intervention and removal of children from the custody of abusive parents in Michigan, and discusses the policies supporting these laws. Part II examines the circumstances present in the *House of Judah* and notes the state's departures from the statutes and rules. Part III analyzes and evaluates the usefulness and wisdom of these departures. Finally, Part IV briefly proposes alternative ways of handling child abuse and neglect cases in the context of communes and cults.

## I. MICHIGAN LAW: PROCEDURES FOR TEMPORARY COURT JURISDICTION OVER CHILDREN SUSPECTED OF BEING ABUSED OR NEGLECTED

In Michigan, the Juvenile Code<sup>8</sup> prescribes general rights and responsibilities of individuals and the state with regard to children suspected of being abused or neglected. The Michigan Juvenile Court Rules supplement these provisions, setting forth more specific standards for state intervention and child removal.

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6. Detroit Free Press, July 8, 1983, at A3.

7. The police took immediate emergency custody of the eleven physically abused children and then the state took custody of all the remaining children the next day at the adjourned preliminary hearing. See *In re Children of the House of Judah*, File Nos. 2211-83 to 2271-83, at 87 (Adjourned Preliminary Hearing, Allegan County P. & Juv. Ct., Mich., filed July 12, 1983) (portions of this hearing on file with U. MICH. J.L. REF.).

8. The Juvenile Code is codified at MICH. COMP. LAWS §§ 712A.1-.28 (1979); recent amendments can be found in MICH. COMP. LAWS ANN. §§ 712A.1-.28 (West Supp. 1985).

### A. Procedures Required by Law

When circumstances in a child's home are so unsafe<sup>9</sup> that they require his immediate removal,<sup>10</sup> Michigan law empowers police officers to take temporary custody of the child.<sup>11</sup> In all cases in which the state has taken temporary custody of a child, a preliminary hearing before a probate court must be held within forty-eight hours of the child's removal from the home.<sup>12</sup> The preliminary hearing is one of the procedural safeguards designed to protect the rights of the parents and child from unwarranted state intervention.<sup>13</sup> At this hearing, "[m]ost, if not all, county juvenile courts require a showing of 'probable cause' or 'reasonable cause' to believe the facts alleged [in the petition]<sup>14</sup> are true

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9. MICH. COMP. LAWS ANN. § 712A.2(b)(2)(West Supp. 1985) provides the state with "[j]urisdiction in proceedings concerning any child under 17 years of age found within the county . . . whose home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian or other custodian, is an unfit place for such child to live in." See *In re Dittrick Infant*, 80 Mich. App. 219, 263 N.W.2d 37 (1977)(finding that continued physical and sexual abuse of a child supported order taking temporary custody of the child's sibling). Compare this rather high level of mistreatment necessary to justify removal, with the lower levels of mistreatment that justify a finding of "unfitness" at a later stage in the proceedings. See, e.g., *In re Taurus F.*, 415 Mich. 512, 330 N.W.2d 33 (1982), *appeal dismissed sub nom. Finney v. Michigan Dep't of Social Services*, 464 U.S. 923 (1983) (holding that imprisonment of mother, without adequate alternative arrangements for custody, justified a finding of unfitness); *In re Adrianson*, 105 Mich. App. 300, 306 N.W.2d 487 (1981)(holding that insufficient food in house and lack of medical care justified a finding of unfitness); *In re Kurzawa*, 95 Mich. App. 346, 290 N.W.2d 431, 435 (1980) ("Jurisdiction under the statute must be based on evidence of parental neglect, not on delinquency.").

10. Alternatives to forced removal, such as voluntary placement of a child with a relative, are possible and preferable when safety can be ensured. See D. DUQUETTE, MICHIGAN CHILD WELFARE LAW 83 (1984)("Deskbook" prepared for Department of Social Services's use). This Note, however, focuses only on forced removal because that was the method the state used in *House of Judah*.

11. MICH. COMP. LAWS § 712A.14 (1979), MICH. JUV. CT. R. 2.1. Following emergency removal the officer must obtain a court order authorizing continued detention, or must return the child to the custody of his parents. MICH. JUV. CT. R. 3.1. Although the statute limits the exercise of this power to police officers, it may effectively authorize emergency removal by protective services workers, who need only telephone for police assistance. The state may also take emergency custody of children through issuance of a Placement Order by a judge. MICH. COMP. LAWS ANN. § 712A.15 (West Supp. 1985), MICH. JUV. CT. R. 2.1. A physician at a hospital may detain a child until an order for removal or release is issued. MICH. COMP. LAWS ANN. § 722.626 (West Supp. 1985).

12. MICH. JUV. CT. R. 4.2(a).

13. "Michigan law recognizes that parental rights are of constitutional magnitude and are protected by the due process clauses of the Michigan and United States Constitutions." *In re Dittrick Infant*, 80 Mich. App. 219, 224 n.2, 263 N.W.2d 37, 39 n.2 (1977). Although some actions the state took in *House of Judah* may be subject to constitutional challenge, this Note's focus is on the state's use of its statutory and common law procedures for child removal.

14. Michigan law requires that a petition for court jurisdiction be filed "set[ting]

and that the facts, if proven, constitute neglect under [Michigan Compiled Laws] 712A.2(b)."<sup>15</sup> Unless the court finds grounds for continued custody under Michigan Juvenile Court Rules 4.2 and 3.1, the state must return the child to his parent or guardian.<sup>16</sup>

If the court authorizes a petition for jurisdiction at the preliminary hearing, it will usually issue a preliminary order specifying a plan for temporary placement.<sup>17</sup> The court may place the child in or out of the parents' custody,<sup>18</sup> and it may place restrictions

forth any charges against a child, parent, or custodian with sufficient clarity and specificity to reasonably apprise them of the matters concerning which court action is sought." MICH. JUV. CT. R. 4.1. *See also* MICH. COMP. LAWS § 712A.11 (1979) ("[The petition] shall set forth plainly the facts which bring said child within the provisions of this chapter . . ."). These provisions stipulate standards and procedures for drafting and filing a petition. *See, e.g., In re Kurzawa*, 95 Mich. App. 346, 290 N.W.2d 431 (1980) (holding that the probate court erred in assuming jurisdiction in proceedings to terminate parental rights; proceedings void *ab initio* because petitions failed to allege the type of neglect contemplated by the statute).

Professor Duquette notes that the petition has two main functions:

First, it is a court document which should state the alleged basis of the court's jurisdiction over a particular child. The petition names the respondents (generally the parents) and sets the scope of the judicial inquiry. The court may not inquire into matters not alleged in the petition . . . Second, the petition is a communication to the respondent parents. It gives them notice of accusations against them so that they might evaluate their situation and prepare a response. The description of the parent's acts of commission or omission should be put in terms specific enough to allow a defense to be prepared.

D. DUQUETTE, *supra* note 10, at 94.

15. D. DUQUETTE, *supra* note 10, at 110-11.

16. *Id.* *See generally* MICH. COMP. LAWS § 712A.1 (1979), the Preamble to the Juvenile Code, which states that "[t]his chapter shall be liberally construed to the end that each child coming within the jurisdiction of the court shall receive . . . care, guidance, and control, preferably in his own home." (emphasis added). Professor Duquette suggests that this creates a presumption in favor of the child remaining in his own home. Indeed, he notes that "[t]he judge or referee is expected to inquire whether reasonable efforts have been made by the petitioner (usually the Department of Social Services) to prevent or eliminate the need for removal from the home." D. DUQUETTE, *supra* note 10, at 114-15. But even with this presumption "the decision concerning placement pending trial will be based on an assessment of the strengths and weaknesses of the family, the social and psychological needs of the child and the risk of further harm to the child." *Id.* at 115.

17. MICH. JUV. CT. R. 4.2(b)(7) describes the options available to a court at the conclusion of the preliminary hearing:

At the conclusion of the Preliminary Hearing the judge or referee shall decide whether to (a) authorize the petition to be filed; and if authorized, (b) release the child in the custody of a parent, guardian or custodian or, on a showing of probable cause that the defendant committed the offense or a waiver of the showing, order detention or placement of the child pending hearing. The defendant may cross-examine the witnesses against him and may introduce evidence on his own behalf. If a child is not released, the child must be placed pending trial in the least restrictive placement that will meet the child's needs and the needs of the public.

18. MICH. COMP. LAWS § 712A.14 (1979) gives the court various options for temporary placement:

on the nature and content of contact any involved adult may have with the child.<sup>19</sup> The statute also requires that the court give notice to the parties affected by each of the court proceedings.<sup>20</sup>

Following the preliminary hearing, the next formal stage in the proceedings is the adjudicative phase at which the court "determines whether the child comes within the probate court's jurisdiction . . . as alleged in the petition."<sup>21</sup> In particular, the court will determine whether the child is neglected within the meaning of the statute. If so, the court will order the disposition or placement that comports with the child's best interests.<sup>22</sup>

### *B. Interests Protected by the Law*

1. *The child's interests*— Most, if not all, commentators would agree that in child abuse cases the child's interests should

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In the event the complaint is authorized the order shall also direct the placement of the child, pending investigation and hearing, which placement may be in the home of the parents, guardian, or custodian, in the boarding care of a licensed child care agency, or in a suitable place of detention designated by the court.

19. According to Professor Duquette, the court may issue orders affecting adult behavior toward the child:

By reading various sections of the Juvenile Code and the Juvenile Court Rules together the court seems to have the authority not only to place the child in foster care or with relatives but also to place a child in the custody of his parent or parents under certain terms and conditions . . . . Such authority may enable the court to protect the child from harm in appropriate cases without removing the child from his familiar surroundings . . . . [These orders] may range from requiring that the parents allow regular, even daily, visits from the caseworker . . . to refraining from alcohol.

D. DUQUETTE, *supra* note 10, at 122-23. See MICH. COMP. LAWS § 712A.1 (1979) (stating that the Juvenile Code is to be liberally construed with a preference for care of the child "in his own home"); MICH. COMP. LAWS § 712A.14 (1979) (declaring that the court shall designate a "suitable place of detention"); MICH. JUV. CT. R. 4.2(b)(7) (stating that if a child is not released, the child must be placed, pending trial, in the least restrictive environment that will meet the child's needs and the needs of the public).

20. The state must attempt to notify the parent(s) or guardian(s) immediately after a child is taken into custody. MICH. COMP. LAWS § 712A.14 (1979); MICH. JUV. CT. R. 2.3. It must also provide the court with a record of who was notified, or the reason for failure to notify. MICH. JUV. CT. R. 2.3. The court's first task at the preliminary hearing is to determine whether notification procedures were properly executed with regard to emergency custody. MICH. JUV. CT. R. 4.2(b)(1). Then the court must explain the nature of the proceedings, MICH. JUV. CT. R. 4.2(b)(3), and advise the parents of their right to an attorney. MICH. JUV. CT. R. 4.2(b)(4).

21. MICH. JUV. CT. R. 8.1(a).

22. MICH. JUV. CT. R. 8.1(b).

be given first priority.<sup>23</sup> Michigan law protects both the child's immediate physical safety and his emotional well-being.

a. *The child's physical safety*<sup>24</sup>— The provisions in Michigan's Juvenile Code that allow for immediate removal of a child in emergency situations manifest the state's commitment to protecting the child's "health, morals, or welfare."<sup>25</sup> Clearly, these provisions speak to the need to protect the child's *physical* safety from an abusive or neglectful parent. Indeed, some commentators would limit the law's intervention primarily to cases in which the child's physical safety appears at risk.<sup>26</sup> Furthermore, Michigan case law unambiguously supports the power of the state to intervene in family relationships when necessary to protect a child from physical harm.<sup>27</sup>

The applicable law reflects a policy that, at the emergency stage, finds the child's interest in safety superior to all other interests. The statute allows for removal of children even if danger is only a possibility. It is not until the preliminary hearing that the earlier removal must be justified before a court.<sup>28</sup> Thus, at this initial stage the law authorizes error on the side of overprotection.

b. *Child's emotional well-being*<sup>29</sup>— Michigan's Juvenile Code also evidences concern for protecting the child's emotional

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23. See IJA-ABA JOINT COMMISSION ON JUVENILE JUSTICE STANDARDS, ABUSE AND NEGLECT 1.5 (1981)[hereinafter cited as STANDARDS]: "[I]n cases where a child's needs, as defined in these standards conflict with his/her parents' interests, the child's needs should have priority." Cf. J. GOLDSTEIN, A. FREUD & A. SOLNIT, BEYOND THE BEST INTERESTS OF THE CHILD 105 (1973)[hereinafter cited as GOLDSTEIN], which qualifies this principle: "[T]he child's interests should be the paramount consideration once, but not before, a child's placement becomes the subject of official controversy."

24. Under the label "physical safety" this Note includes protection from any immediate danger. It is possible to imagine a case requiring emergency removal to protect a child from immediate emotional harm. Such harm might result if, for example, a child were forced to witness one parent brutally beat or kill the other. Cf. *In re Arntz*, 125 Mich. App. 634, 637-38, 336 N.W.2d 848, 850 (1983) (per curiam) (stating that probate court properly assumed jurisdiction where petition included allegation that children were deprived of "emotional well-being"), *rev'd on other grounds*, 418 Mich. 941, 344 N.W.2d 1 (1984). More typically, emergency removal is required only to protect physical safety.

25. MICH. COMP. LAWS § 712A.14 (1979), MICH. JUV. CT. R. 2.2(d). See *supra* notes 9-11 and accompanying text.

26. See STANDARDS, *supra* note 23, at 93-94; Wald, *State Intervention on Behalf of "Neglected" Children: A Search for Realistic Standards*, 27 STAN. L. REV. 985, 1007-20 (1975).

27. See, e.g., *In re Dittrick Infant*, 80 Mich. App. 219, 263 N.W.2d 37 (1977)(holding that continued physical and sexual abuse of a child supported order taking temporary custody of his sibling).

28. See MICH. JUV. CT. R. 4.2(a), and *supra* text accompanying note 15.

29. See GOLDSTEIN, *supra* note 23, at 31-37. "Continuity of relationships, surroundings, and environmental influence are essential for a child's normal development." *Id.* at 31-32.

well-being.<sup>30</sup> Protection of the child's emotional well-being, however, is difficult to provide for several reasons. First, psychologists themselves disagree about how best to protect the emotional well-being of a child.<sup>31</sup> Regardless of this ambiguity, protection of physical safety may conflict with the protection of emotional stability. Psychologists say that children form important emotional bonds even with abusive or neglectful parents.<sup>32</sup> Because it disrupts whatever stable home-life the child may know, removal of a child from his family may cause substantial emotional and psychological damage.<sup>33</sup> Perhaps partly for this reason, Michigan's Juvenile Code states a preference for placing the child in his own home, although the child still may be under the court's jurisdiction.<sup>34</sup>

The Michigan Supreme Court has attempted to resolve the frequent conflict between the child's interests in emotional well-being and physical safety.<sup>35</sup> Similarly, the Michigan Juvenile Code attempts to balance these interests. First, the law grants substantial authority to the state to remove possibly endangered

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30. See MICH. COMP. LAWS ANN. § 712A.2(b)(2) (West Supp. 1985); MICH. JUV. CT. R. 2.1(a). See also *In re Arntz*, 125 Mich. App. 634, 637-38, 336 N.W.2d 848, 850 (1983) (ruling that the probate court properly assumed jurisdiction over minor children where the petition filed included allegations that the children were deprived of "emotional well-being"), *rev'd on other grounds*, 418 Mich. 941, 344 N.W.2d 1 (1984).

31. Emphasizing the vital importance of continuity and stability in a child's psychological development, some commentators insist that the child's emotional well-being is best protected by minimal state interference with the parent-child relationship. See J. GOLDSTEIN, A. FREUD & A. SOLNIT, *BEFORE THE BEST INTERESTS OF THE CHILD* 8-10 (1979). Others, however, find this simple formula unsatisfying, because it fails to consider the benefits of intervention. See Wald, Book Review, 78 MICH. L. REV. 645, 664-65 (1980) (reviewing J. GOLDSTEIN, A. FREUD & A. SOLNIT, *BEFORE THE BEST INTERESTS OF THE CHILD* (1979)).

32. See GOLDSTEIN, *supra* note 23, at 19; Wald, *supra* note 26, at 994.

33. See GOLDSTEIN, *supra* note 23, at 19-20; Wald, *supra* note 26, at 994.

34. MICH. COMP. LAWS ANN. § 712A.2(b) (West Supp. 1985). See *supra* note 16 and accompanying text. See *Reist v. Bay County*, 396 Mich. 326, 345-46, 241 N.W.2d 55, 64 (1976) ("The best interests of the child will often be served by preservation of the parent-child bond; the child as well as the parent has an interest in preservation of their relationship.").

35. The elements of the conflict are clearly presented in *Reist v. Bay County*, 396 Mich. 326, 241 N.W.2d 55 (1976). The majority emphasized the child's interest in emotional well-being and found this interest to be consistent with the parent's interest in care and custody. *Id.* at 345, 241 N.W.2d at 64. Justice Coleman, in a separate opinion, disagreed:

In termination proceedings, the focus is on protecting the child. The question is whether the juvenile court must intercede on behalf of the child. Upon a disposition which terminates parental rights, the court necessarily finds that it is contrary to the best interest of the child to remain with that parent. It has been determined as a matter of fact and of law that the interests of the parent and of the child are inconsistent.

*Id.* at 356, 241 N.W.2d at 68 (Coleman, J., dissenting in part).



children in the initial emergency stages of the proceedings.<sup>36</sup> Although the authority granted to the police and medical personnel<sup>37</sup> may result in erroneous removal of some children, such removal from imminent physical danger is carefully limited in scope and duration.<sup>38</sup> Later, after emergency removal has eliminated the immediate physical danger,<sup>39</sup> the law's more rigorous standards require a showing of reasonable cause to believe that the parent committed legal neglect before continued removal may be authorized.<sup>40</sup> In this way the negative emotional effects of prolonged separation are avoided, unless there is a showing of the likelihood of continued physical or emotional danger.

2. *Parental interests*— In Anglo-American society, the law traditionally grants parents a great amount of freedom in raising their children.<sup>41</sup> The Supreme Court repeatedly has indicated that parents' interests in care and custody of their children are tantamount to "fundamental liberties" protected by the due process clause of the Constitution.<sup>42</sup>

Michigan statutory law likewise protects several parental interests. Most obvious among these provisions is the Juvenile

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36. See *supra* notes 9-11 and accompanying text. See also MICH. JUV. CT. R. 2.2(d)(allowing temporary custody without a court order when a child's surroundings endanger his health, morals, or welfare).

37. See *supra* note 11.

38. MICH. JUV. CT. R. 4.2(a) (requiring that a preliminary hearing before a probate court be held within 48 hours of a child's removal from his home).

39. See *supra* notes 9-11 and accompanying text.

40. MICH. JUV. CT. R. 4.2.

41. See, e.g., *Wisconsin v. Yoder*, 406 U.S. 205, 234-36 (1971)(upholding the right of Amish, on religious and cultural grounds, to withdraw their children from public school prior to the minimum dropout age); *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944) (stressing parents' right to the custody, care, and nurture of their children); *Pierce v. Society of Sisters*, 268 U.S. 510, 534-35 (1925) (upholding right of parents to direct the upbringing and education of their children); *Meyer v. Nebraska*, 262 U.S. 390, 400 (1923) (upholding the right of parents to control of their children and recognizing their corresponding duty to provide suitable education). See also J. LOCKE, *THE SECOND TREATISE OF CIVIL GOVERNMENT* (1947):

God hath made it their [the parents'] business to employ this care on their offspring, and hath placed in them suitable inclinations of tenderness and concern to temper this power, to apply it, as his wisdom designed it, to the children's good, as long as they should need to be under it.

*Id.* at 32.

42. *May v. Anderson*, 345 U.S. 528, 533 (1953)(stating that the right to care and custody of one's child is a right "far more precious . . . than property rights"); *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944)(declaring that "the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder"); *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942)(declaring that the right to care and custody of one's child is "one of the basic civil rights of man").

Code's presumption in favor of home placement.<sup>43</sup> Even after parental misconduct has allowed state intervention in the family sphere, many provisions of the Code are designed to protect parents' due process rights.<sup>44</sup>

3. *When the interests conflict: the statutory policy*—As the ultimate protector of children from abuse and neglect, the state has an obligation to secure the health and safety of children.<sup>45</sup> But as the Supreme Court has noted, the state has no interest in separating a child from a fit parent,<sup>46</sup> and such a parent has a strong interest in a fair adjudication to protect his own interest in the care and custody of his child.<sup>47</sup> To ensure that the state exercises its *parens patriae* power<sup>48</sup> only in cases of necessity, the Michigan legislature has enacted the Juvenile Code.<sup>49</sup> Through enactment of procedural safeguards, the legislature has attempted to protect both the child's and the parents' interests. The Code gives protective services workers and police officers the authority to remove a child on the mere appearance of danger,<sup>50</sup> while limiting this authority by requiring the prosecutor to prove such danger to a judge shortly after the removal.<sup>51</sup>

At the emergency stage, the child's interest in physical

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43. MICH. COMP. LAWS § 712A.1 (1979). See *supra* note 16 and accompanying text.

44. Michigan law recognizes that parental rights are of constitutional magnitude and are protected by the due process clauses of the Michigan and United States Constitutions. *In re Dittrick Infant*, 80 Mich. App. 219, 224 n.2, 263 N.W.2d 37, 39 n.2 (1977). To ensure procedural due process, the Michigan legislature has enacted provisions in the Juvenile Code and Juvenile Court Rules. See, e.g., MICH. COMP. LAWS ANN. §§ 600.861, 712A.21 (West Supp. 1985); MICH. JUV. CT. R. 2.3, 4, 7, 8, 9.

45. In performing this obligation, the state relies on its *parens patriae* power.

"*Parens patriae*," literally "parent of country," . . .

*Parens patriae* originates from the English common law where the King had a royal prerogative to act as guardian to persons with legal disabilities such as infants, idiots and lunatics. In the United States, the *parens patriae* function belongs with the states.

BLACK'S LAW DICTIONARY 1003 (5th ed. 1979).

46. See *Stanley v. Illinois*, 405 U.S. 645, 652 (1971). "We do not question the assertion that neglectful parents may be separated from their children . . . [But] we observe that the State registers no gain towards its declared goals when it separates children from the custody of fit parents."

47. "We have concluded that all Illinois parents are constitutionally entitled to a hearing on their fitness before their children are removed from their custody." *Id.* at 658.

48. See *supra* note 45.

49. Every state has enacted laws protecting abused and neglected children. See, e.g., ALA. CODE §§ 26-14-1 to 26-14-13 (1975 & Supp. 1984); ARIZ. REV. STAT. ANN. §§ 8-531 to 8-544 (1956 & West Supp. 1974-84); IND. CODE ANN. §§ 31-6-11-1 to 31-6-11-22 (West 1979 & Supp. 1984); VT. STAT. ANN. tit. 33, §§ 681-689 (Supp. 1984); WASH. REV. CODE §§ 26.44.010-.44.900 (1983).

50. See *supra* notes 9-11 and accompanying text; MICH. JUV. CT. R. 2.2(d).

51. See *supra* notes 12-16 and accompanying text.

safety<sup>52</sup> is clearly paramount, and parents' interests get little if any consideration.<sup>53</sup> Michigan law allows police and medical professionals to detain or take temporary custody of a child whom they suspect is, or has been, abused or neglected.<sup>54</sup> This broad grant of authority allows for substantial error on the side of overprotection. Concern for the child's physical safety<sup>55</sup> and recognition of the state's role as the ultimate protector of children<sup>56</sup> together justify this policy.

At the preliminary hearing stage the child's interest in physical safety remains paramount, but the law limits the state's options for protecting this interest. Because it cannot be that after forty-eight hours the state ceases to be concerned with the child's physical safety,<sup>57</sup> the more limited range of options available to the court and to the state's agents—police, protective services workers, courts, prosecutors—must reflect a desire to protect the child's interest in maintaining a continuous, emotional relationship with his parents<sup>58</sup> and the parents' interest in custody and care of their child.<sup>59</sup> The Juvenile Code delegates the state's ultimate decision-making power to a neutral fact finder by requiring an adversary preliminary hearing to be held within forty-eight hours of emergency removal.<sup>60</sup> At this hearing the state's agents must file a petition<sup>61</sup> and convince the probate court that there is "reasonable cause to believe that the facts alleged [in the petition] are true, and that the facts, if proven, constitute neglect."<sup>62</sup> Furthermore, unlike the *ex parte* proceeding at which the court may issue an order of emergency custody,<sup>63</sup> at the preliminary hearing the parents' right to appear with counsel<sup>64</sup> limits the prosecutor's ability to effect or continue removal of a child. Even if the court should find neglect, it re-

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52. See *supra* note 24.

53. Parents' interests appear to be protected, for example, by protective services workers' inability to legally remove a child from his parents. See D. DUQUETTE, *supra* note 10, at 83. This serves as little protection, however, because Michigan law empowers police to take immediate custody of endangered children. See *supra* note 11.

54. See *supra* notes 9-11 and accompanying text.

55. See *supra* notes 24-25 and accompanying text.

56. See *supra* note 45 and accompanying text.

57. Within 48 hours of removal the state must hold a preliminary hearing. MICH. JUV. CT. R. 4.2.

58. See *supra* notes 29-40 and accompanying text. The emotional well-being of the child is protected in addition to the parents' interests. See *supra* note 35.

59. See *supra* notes 41-44 and accompanying text.

60. MICH. JUV. CT. R. 4.2(a).

61. MICH. COMP. LAWS § 712A.11 (1979); MICH. JUV. CT. R. 4.1.

62. D. DUQUETTE, *supra* note 10, at 110-11.

63. MICH. JUV. CT. R. 3.3(b)(1); see D. DUQUETTE, *supra* note 10, at 86.

64. See MICH. JUV. CT. R. 4.2(b)(4).

mains bound by the statutory preference for home placement.<sup>65</sup>

At the adjudicative phase<sup>66</sup> the Juvenile Code increases the protection of the parents' and child's interests in continuous care and custody by requiring a higher standard of proof than at earlier phases. This higher standard mandates that the prosecutor show by a preponderance of the evidence that the allegations in the petition are true.<sup>67</sup> The higher standard of proof restricts the options available to the state's agents by narrowing the range of facts regarding which the prosecutor can successfully convince a judge of the necessity for foster care. Thus, weak evidence encourages the state's agents to settle with the parents for less control of a child than the state believes necessary to protect the child fully.

The legislative goal of protecting both the parents' and child's interests in continuous care and custody, and the state's interest in protecting the child's physical safety, are manifest in the internal logic of the Juvenile Code. The Code gives the state's agents broad authority to protect even possibly endangered children from physical harm at the emergency stage, but then gradually adds procedural safeguards to protect other interests in later stages by requiring attention to the individual parent-child relationship.

## II. HOUSE OF JUDAH

Comparison of the response of the court and the state's agents with Michigan law reveals that the agents departed from some statutory provisions while securing custody of the children at the House of Judah camp. Although departures occurred at several different stages of the removal process, they were closely linked by an underlying failure to treat each child individually.

### *A. How The Court and State's Agents Responded*

The state's involvement with the House of Judah began when members of the camp brought the body of a twelve-year-old boy to the hospital. Physicians suspected physical abuse as the cause

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65. See *supra* note 16 and accompanying text.

66. MICH. JUV. CT. R. 8.1(a) ("The adjudicative phase determines whether the child comes within the court's jurisdiction . . .").

67. MICH. JUV. CT. R. 8.3(a).

of death and contacted the police.<sup>68</sup> The police visited the camp to question the boy's mother, and removed her other children from the household.<sup>69</sup> In accordance with Michigan law, a preliminary hearing was scheduled and held two days later.<sup>70</sup>

From responses to a series of questions the court posed at the preliminary hearing, and from information Prophet Lewis volunteered, the court concluded that the emergency removal of the dead boy's siblings was reasonable.<sup>71</sup> It also concluded that Prophet Lewis's influence over the children and parents in the camp made him the "guardian" of all the children.<sup>72</sup> The court appeared to rest its conclusion of guardianship on the theory that the only meaningful characterization of the relationship between the various members of the cult was that of a family.<sup>73</sup> As the apparent head of this large family, Prophet Lewis seemed to have a strong influence over the disciplinary practices in the camp. Because of the strict disciplinary beliefs Lewis espoused,<sup>74</sup> the court reasoned that the same practices that appeared to have led to the death of one child might endanger the other children in the camp. Accordingly, the court ordered investigation of

68. Michigan law requires certain professionals, including physicians, to report suspected child abuse or neglect. MICH. COMP. LAWS ANN. § 722.623 (West Supp. 1985).

69. See Detroit Free Press, July 8, 1983, at A3.

70. MICH. JUV. CT. R. 4.2(a).

71. See *In re Children of the House of Judah*, File Nos. 2206-83 to 2210-83, at 46-47 (Preliminary Hearing, Allegan County P. & Juv. Ct., Mich., filed July 6, 1983). Presumably, removal of the abused child's siblings was found to be consistent with Michigan law. See *infra* note 96 and accompanying text.

72. See *In re Children of the House of Judah*, File Nos. 2206-83 to 2210-83, at 48-49 (Preliminary Hearing, Allegan County P. & Juv. Ct., Mich., filed July 6, 1983).

73. See *id.* See also *In re Children of the House of Judah*, File Nos. 2211-83 to 2271-83, at 183 (Adjourned Preliminary Hearing, Allegan County P. & Juv. Ct., Mich., filed July 12, 1983). The court said:

That as a result, the Court is going to continue [to hold] all of the children . . . including [the dead child's siblings even though they] are not technically [before the court] today. [T]he same reasoning applies [to all of the children] because the same threat is there. [T]here is but . . . one big . . . umbrella family here [consisting] of all those who look to [the Prophet Lewis as their leader on earth]. [T]here's been no indication that there will be any change in the area [with which] the Court is concerned . . . .

*Id.* at 183.

74. Detroit Free Press, July 10, 1983, at A11:

Punishment at the camp was rigorous and systematic, Lewis said.

Lewis said he divides the group into three age groups: those younger than seven years old, those seven to 17 years old, and adults. Punishment depends on the age of the member and the transgression, Lewis said.

. . . .

Younger members are beaten with switches by their mothers, often as Lewis stands by and assures it is done right, he said.

the welfare of all the children.<sup>75</sup>

At the preliminary hearing the probate court appointed an investigatory committee consisting of a physician, social workers, and the court administrator to visit the camp the next day and examine all the children for evidence of abuse and/or neglect.<sup>76</sup> Physical examinations of the children revealed evidence of abuse in eleven of the sixty-six cases.<sup>77</sup> When questioned by committee members as to the cause of the children's injuries, the parents candidly admitted to having administered harsh physical discipline, in accordance with the teachings and instructions of Prophet Lewis.<sup>78</sup> After this three-hour investigation the police took custody of the eleven abused children.<sup>79</sup> The next day, at the adjourned preliminary hearing, the court ordered the removal of all of the children still living in the camp.<sup>80</sup>

Upon removal from the camp, the state's agents placed the children in foster homes in Allegan and surrounding counties. Department of Social Services (the Department) workers in these counties then arranged for physical, psychological, and emotional studies of the children.<sup>81</sup> The studies concluded, among other things, that the children were for the most part emotionally and psychologically well-adjusted.<sup>82</sup> Moreover, the studies revealed that the children's bonds with their parents were very strong.<sup>83</sup> With one or two exceptions, the committee also concluded that the parents were emotionally and psycholog-

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75. *In re Children of the House of Judah*, File Nos. 2206-83 to 2210-83, at 51 (Preliminary Hearing, Allegan County P. & Juv. Ct., Mich., filed July 6, 1983).

76. *See id.* at 51-52.

77. Detroit Free Press, August 28, 1983, at A3.

78. *See In re Children of the House of Judah*, File Nos. 2211-83 to 2271-83 (Adjourned Preliminary Hearing, Allegan County P. & Juv. Ct., Mich., filed July 12, 1983). The court stated:

There's no remorse for [past punishment and the boy's death], at least none is proclaimed . . . . [I]f presented with the same situation again, the same discipline could be expected . . . . [T]he head of the House of Judah [has said] that he would do it [again] and [apparently] he's not going to . . . change . . . [his] beliefs [or his understanding of] the bible.

*Id.* at 182.

79. Detroit Free Press, July 8, 1983, at A3.

80. *In re Children of the House of Judah*, File Nos. 2211-83 to 2271-83, at 182 (Adjourned Preliminary Hearing, Allegan County P. & Juv. Ct., Mich., filed July 12, 1983).

81. *Id.* at 183-85.

82. Interview with John Atkins, Allegan County Juv. Ct. Adm'r, in Allegan, Michigan (May 8, 1985) [hereinafter cited as Atkins interview]. In addition to his job as court administrator for the case, John Atkins also served as head of the committee appointed by the judge to investigate and evaluate the conditions at the camp. He worked closely with the parties to the case as well as the investigative personnel.

83. *Id.*

ically well-adjusted.<sup>84</sup>

Despite the statutory requirement that adjudicatory hearings take place within forty-two days of preliminary hearings,<sup>85</sup> appeal of certain interlocutory orders delayed the adjudicatory hearing for more than two months.<sup>86</sup> During this period the investigatory committee concluded that it had a reasonable chance of demonstrating parental neglect only in the cases of the eleven children who had shown signs of physical abuse.<sup>87</sup> With this in mind, the state's agents proposed to the parents the return of the children and the avoidance of an adjudicatory hearing altogether, if the parents agreed to a Dispositional Plan drawn up by the state's agents.<sup>88</sup> The Dispositional Plan required the parents to agree to end all excessive physical punishment,<sup>89</sup> make certain repairs and improvements to the camp facilities,<sup>90</sup> and attend a six-week parenting course conducted by the Department.<sup>91</sup> In addition, the Plan allowed certain court officials and social workers to visit, observe, and inspect the camp at any time.<sup>92</sup> In exchange, the state's agents agreed to return the children.<sup>93</sup> The parents and their attorney agreed to this arrangement and the court eventually approved it.<sup>94</sup>

### *B. Departures from the Statutory Scheme: Lack of Individualized Treatment*

The probate court's actions in *House of Judah* reveal at least four departures from the statutory rules and procedures normally followed in "ordinary" child abuse and neglect cases. Each of these departures involved a lack of individualized treatment

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84. *Id.*

85. MICH. JUV. CT. R. 8.1.

86. After the preliminary hearings, a newspaper organization filed a motion to keep the proceedings open to the media. This issue was argued numerous times in the circuit court and thus delayed the adjudicatory phase. *In re Booth Newspapers, Inc.*, File No. 83-5464 AS (Allegan County Cir. Ct., Mich., filed Aug. 18, 1983).

87. Atkins interview, *supra* note 82. According to Atkins, the committee formed to oversee the investigation of the children and parents came to a consensus on this point.

88. *Id.* Each family was presented with a copy of the Plan.

89. See Dispositional Plan, points 2 and 3a (copy on file with U. MICH. J.L. REF.).

90. *Id.* at point 3b.

91. *Id.* at point 4e.

92. *Id.* at point 4b.

93. Atkins interview, *supra* note 82.

94. *Id.*

Approximately eleven of the children are still in foster care. Many of these have not been returned because their parents are either in prison or have just been released and are not yet able to support their children. *Id.*

of the parents and children.

1. *Emergency removal and filing of petitions*— Before a court may authorize a petition for temporary removal, Michigan law requires that the prosecutor show that “reasonable cause” exists to believe that the allegations in the petition are true, and that if true constitute legal neglect.<sup>95</sup> In concluding that reasonable cause exists as to a particular child, courts have permitted the prosecutor to present evidence of mistreatment of that child’s siblings.<sup>96</sup> To date, however, no Michigan court has found reasonable cause to believe a child in one household has been neglected on the basis of harm to a child in another household.

In *House of Judah*, the court appears to have stretched the reasonable cause requirement outside the walls of the abusing household to include all of the children in the camp. The material elements of the petitions provide evidence of this stretching of the reasonable cause requirement. The petitions for temporary removal alleged that each child was situated similarly to the child who was beaten to death because the children all lived in the same religious camp, at which abuse was an accepted practice.<sup>97</sup> They also alleged that each parent may not have been sufficiently protective of his children because the abused boy’s mother failed to protect him.<sup>98</sup> Although formally addressed to each child and his parents, the petitions did not allege facts spe-

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95. D. DUQUETTE, *supra* note 10, at 110-11.

96. *In re Laflure*, 48 Mich. App. 377, 392, 210 N.W.2d 482, 489 (1973) (“How a parent treats one child is certainly probative of how that parent may treat other children . . . such evidence should be received.”) Evidence of mistreatment of siblings can be presented even “where no prior determination of neglect has been made.” *In re Dittrick Infant*, 80 Mich. App. 219, 222, 263 N.W.2d 37, 39 (1977).

97. See *In re Children of the House of Judah*, File Nos. 2211-83 to 2271-83, 7 (Preliminary Hearing, Allegan County P. & Juv. Ct., Mich., filed July 8, 1983) (portions of this hearing on file with U. MICH. J.L. REF.). Sections of the identical petitions read:

1. That on July 4, 1983, [a boy] . . . died as a result of a severe beating.
2. That [the boy] was beaten while a member of the religious colony known as the House of Judah.
3. That Dr. Kenneth Kratzner examined several of the children from the same household on July 4, 1983, and observed what appeared to be scars and other evidence of what was in his opinion physical abuse.
4. That it is my understanding that physical punishment and abuse is an accepted practice at, “the,” religious colony.
5. That the Prophet Lewis, the leader of the colony, has openly admitted the use of a ‘rod’ upon members of the colony, including the juveniles, to ‘chastise’ them.
6. That your petitioner is concerned for the physical safety of said child, especially in light of the fact that no parent or parental figure protected [the dead boy].

*Id.* at 7.

98. See *id.* Count 6 makes this general allegation.



cific to the named parties, but made general allegations relying on the parties' membership in, and residence at, the House of Judah camp.

It might be argued that lack of specificity made the petitions insufficient as a matter of law.<sup>99</sup> But even if the petitions contained sufficient legal specificity, and the allegations could have been proven, it is still not clear that the allegations would have constituted neglect. If proven, the material elements of the petitions<sup>100</sup> would merely have shown that the parties lived in a commune in which strict physical punishment was an accepted practice<sup>101</sup> and in which one parent was not sufficiently protective of her child.<sup>102</sup>

Although the prosecutor could easily have remedied the deficiencies in specificity of the allegations by amendment,<sup>103</sup> the petition evinces the prosecutor's and court's non-individualistic theory of the case. The literal identity of the sixty-six petitions indicates that state involvement began with no consideration of the potential differences in parental attitudes, behavior, and skills that might have characterized particular parent-child relationships. Allegation that harm to one child indicated potential harm to another non-family child extended the reach of the probable cause requirement beyond prior Michigan precedent.<sup>104</sup> In addition, this allegation foreshadowed an inattention to indi-

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99. See *supra* note 14. According to Professor Duquette, the practice in at least the majority of counties in Michigan would be to reject the petitions filed in *House of Judah* because they fail to make specific allegations of abuse to specific children. Interview with Don Duquette, Professor of Law, University of Michigan Law School, Ann Arbor, Michigan (April 21, 1985).

See generally *In re Certain Children*, No. 22-6-840sj, slip op. (Dist. Ct. Vt. July 12, 1984) (copy on file with U. MICH. J.L. REF.). The State of Vermont took custody of 112 children whose families allegedly belonged to the Northeast Kingdom Community Church in Island Pond, Vermont. The court rejected the state's petition for jurisdiction which alleged that "all children under the age of 18 residing in the community . . . may be in need of care and supervision." *Id.* at 2 (emphasis omitted). The court held the petition to be "defective on its face," *id.* at 3, because it made "no attempt to allege facts constituting any of the children to be children in need of care or supervision. Although the accompanying affidavit [did] make reference to *other* specific children, presumably living in the same community, it is essentially a collection of generalized assumptions as to *these* children." *Id.* at 5 (emphasis in original).

Thus, in a case factually similar to *House of Judah* but governed by another jurisdiction, a court refused to accept generalized petitions. The court in *In re Certain Children* was concerned that the state's group approach might violate the parent's first and fifth amendment rights of freedom of association and religion. *Id.* at 7-8.

100. See *supra* note 97.

101. See *supra* note 97. Count 4 makes this allegation.

102. See *supra* note 97. Count 6 makes this allegation.

103. MICH. COMP. LAWS § 712A.11 (1979).

104. See *supra* note 96 and accompanying text.

vidual family characteristics that pervaded the case<sup>105</sup> and could well have led to serious harm to some of the children of the camp.<sup>106</sup> Precisely because the Juvenile Code's highest priority demands protection of children from physical harm,<sup>107</sup> any procedure that increases the risk of harm to individual children departs from the statutory policy.<sup>108</sup> Even apart from the problem presented by petitions making allegations that if proven would not have constituted neglect, the failure to require specificity sufficient to protect each child unacceptably violated the Juvenile Code.

2. *Treating the camp as one "family" and the Prophet Lewis as the "guardian" of all of the children*— In permitting the prosecutor to make a reasonable cause showing on the basis of the death of a child from another family, the court also relied on its finding that Prophet Lewis was the guardian of the children of the communal family. The court's acceptance of this non-individualistic approach is further evidence of its stretching the reasonable cause standard. The propriety of the removal of the sixty-six children therefore turns in large measure on the finding that Prophet Lewis was their guardian.

In making this finding, the court departed from any existing statutory or precedential authority. The Juvenile Code frequently uses "guardian" interchangeably with "parent" and "custodian,"<sup>109</sup> and the same legal responsibilities, at least with respect to abusive or neglectful behavior, are imposed upon all three classes of adults.<sup>110</sup> Michigan law does not contemplate the

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105. The court treated the camp as one family, accepted petitions lacking information specific to each child, and negotiated the return of the children as a group. *See infra* text accompanying notes 109-23.

106. For example, treating the children as a group rather than as individuals could lead the state to return even endangered children as part of a "package" solution. *See infra* text accompanying notes 152-53.

107. *See supra* note 25 and accompanying text.

108. *See supra* text accompanying note 45.

109. *See, e.g.*, MICH. COMP. LAWS ANN. § 712A.2(b) (West Supp. 1985) (giving the court jurisdiction where home or environment of "a parent, guardian or other custodian, is an unfit place for such child to live"); MICH. COMP. LAWS § 712A.14 (1979) (authorizing the release of a child "found violating any law or ordinance" to his "parents, guardian or custodian" unless the judge authorizes the filing of a complaint).

110. *See, e.g.*, MICH. COMP. LAWS ANN. § 712A.2(b)(1) (West Supp. 1985) (giving the court jurisdiction over a child when the parent, guardian, or custodian fails to provide the support, education, medical, and other care necessary for health and morals); § 712A.18(3) (authorizing the court to include a provision in an order of disposition that requires the child, parent, guardian, or custodian to reimburse the state for the cost of services); MICH. JUV. CT. R. 1.3 (stating that the court rules are designed to "safeguard procedural rights, and the proper interests of the child, the child's parents, guardians or custodians, and the public"); Rule 2.3 (requiring an officer taking a child into custody to notify the parent, guardian, or custodian); Rule 6.1 (requiring court to notify the child

use of the term "guardian" to describe some intermediate or ancillary position of responsibility and control over children who live with their legal parents. The court may appoint a guardian for a minor child when either the parents' rights have been terminated, or the child's physical well-being necessitates appointment.<sup>111</sup> The court made neither of these findings in *House of Judah*. The court did not terminate the parents' rights and Prophet Lewis was not appointed guardian to ensure the physical well-being of the children. Thus, by naming Prophet Lewis guardian of sixty-six children, all of whom lived with their legal parents, the court created an intermediate status. The court's action clearly departs from existing Michigan authority.

3. *Continued non-specific treatment: failure to amend petitions*— The court also departed from Michigan law by failing to require the prosecutor to amend the petitions and prevail at an adjourned preliminary hearing.<sup>112</sup> In all child abuse and neglect cases involving removal, the Department is obligated to do an investigation,<sup>113</sup> file a petition,<sup>114</sup> and produce evidence to support the petition at a preliminary hearing.<sup>115</sup> In *House of Judah*, the state's agents did not make an investigation sufficient to determine whether individual children were in danger. Consequently, the state's agents lacked the information necessary to file a petition specific to each child.<sup>116</sup> The court held a preliminary hearing but deviated from the statute and accepted the faulty petitions. It did not, as it might have, schedule an ad-

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and his parent, guardian, or custodian of their right to counsel, and stating that such counsel may be appointed by the court under Rule 6.3 (A)(2)(b)).

111. The Child Protection Law, MICH. COMP. LAWS ANN. §§ 722.621-.636 (West Supp. 1985), makes no provision for the appointment of guardians. That function is granted to the probate court under MICH. COMP. LAWS ANN. § 700.424 (West Supp. 1985). The court may appoint a guardian for a minor child when either "(a) [t]he parental rights of both parents or of the surviving parent have been terminated or suspended by . . . prior court order," or "(b) [t]he appointment is necessary for the immediate physical well-being of the minor." *Id.*

It is also possible for the court to appoint a limited guardian under MICH. COMP. LAWS ANN. § 700.424a (West Supp. 1985). This, however, may be done only when the parents voluntarily consent to the suspension of their parental rights. The parents in *House of Judah* never gave this consent.

112. MICH. JUV. CR. R. 4.2(b)(6) allows for adjournment of the preliminary hearing for up to 10 days in cases in which an order for detention has been granted to take testimony and for other good cause.

113. Although this investigation is not statutorily required for the Department to take custody, as a practical matter an investigation is necessary in order to file an adequate petition and convince a judge of the need for taking temporary jurisdiction and custody of a child.

114. See *supra* note 14.

115. See D. DUQUETTE, *supra* note 10, at 110-11.

116. See *supra* notes 97-102 and accompanying text.

journing hearing,<sup>117</sup> at which the Department would have been required to submit individualized petitions based on sufficient investigation. Because these actions failed to provide the individualized information and protection necessary to effectuate the statutory scheme, the court failed to compel the state's agents to meet the requirements of Michigan's law.

4. *Negotiating return of the children as a group*— When approving the return of children to their parents, the Juvenile Code requires the court to examine individual families. The statute addresses individual children and their parents, not groups of children and groups of parents.<sup>118</sup> The legislature's concern for individualized treatment rests on two grounds. First, it recognizes the importance to the child of a continuous relationship with his parents. The state ought not disrupt this relationship without good reason. Even more important, failure to treat children individually may harm a child whose needs differ from those of the group.<sup>119</sup>

In addition, due process requirements protect the parents' rights to care and custody of their children.<sup>120</sup> The state has an interest in protecting children from unfit parents, but has no interest in separating children from fit parents.<sup>121</sup> The prosecutor cannot make the showing of a parent's unfitness necessary to justify separation from his child without examination of the individual parent.<sup>122</sup> Both Michigan law and the principle of due process thus protect the individual parent-child relationship. By negotiating and executing the return of the children to their parents as a group, the state's agents deviated from this policy of individualized treatment. Due to the potential harm that necessarily adheres to children thus packaged,<sup>123</sup> this deviation was

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117. MICH. JUV. CT. R. 4.2(b)(6).

The court in *House of Judah* adjourned the first preliminary hearing, which only involved the dead boy's siblings, to investigate the rest of the camp. After a quick investigation of only one day, the hearing resumed two days later, and then the court took temporary custody of all 66 children. Thus, although the court adjourned the first preliminary hearing to investigate the camp, the investigation was insufficient to produce individualized information or petitions.

118. See, e.g., MICH. COMP. LAWS § 712A.1 (1979) ("[E]ach child coming within the jurisdiction of the court shall receive . . . in his home . . .") (emphasis added); MICH. COMP. LAWS ANN. § 712A.2(b)(2) (West Supp. 1985) ("Whose home or environment, by reason of neglect, cruelty . . . is an unfit place for *such child* to live in.") (emphasis added). See also *supra* note 110 which lists provisions of the statute and rules addressed to the individual parent, guardian, or custodian.

119. See *infra* text accompanying notes 152-53.

120. See *supra* note 42.

121. See *supra* note 46.

122. See *supra* note 47.

123. See *infra* text accompanying notes 152-53.

unacceptable.

### III. ANALYSIS OF DEPARTURES FROM MICHIGAN LAW IN REMOVAL OF CHILDREN FROM *House of Judah*

All of the probate court's departures from Michigan law concerning the separation of a child from his parents resulted from the decision to treat the members of the camp as if they were one family. This approach is understandable, considering the communal nature of the group and the limited resources of the court and state agencies.<sup>124</sup> In retrospect, however, not all of these departures comported with the legal requirements of the statutory policy. The isolation and structure of the camp, together with evidence of some abuse, justified allowing the showing of one child's death to serve as reasonable cause to believe that other children in the camp might also be in danger. Beyond this emergency stage of removal, however, treating the parties as one family was contrary to the language and intent of the Juvenile Code and Juvenile Court Rules, and unwise as a matter of policy.

#### A. *Emergency Removal: Discretion To Err On The Side Of Child Protection*

Permitting the showing of one child's death to serve as reasonable cause to believe that other children in the camp also were in danger was an appropriate, if not necessary, accommodation to the peculiar circumstances of a cult community. The isolation and structure of the commune were both factors relevant to the children's safety and welfare, and they combined to permit a reasonable cause showing to rest on evidence of harm to a non-family member child.<sup>125</sup> Although the prosecutor was justified in stretching the reasonable cause requirement to include persons

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124. It is easy to sympathize with the state agencies and the Allegan community as a whole. Most communities, especially small, predominately white rural towns such as Allegan, would be shocked by these events and understandably would want to dispose of the problem as quickly as possible. Furthermore, in light of the unusual beliefs of the House of Judah, the tendency to treat its members as a group outside of the community is natural. Nevertheless, statutes and procedures govern child abuse and neglect, and this Note argues that these statutes and procedures can work effectively even in the unusual context of a commune or cult.

125. See *infra* notes 128-37 and accompanying text.

outside of the abused child's household, not all cases involving cults and communes would necessarily justify this extension.<sup>126</sup> Membership in a cult or commune cannot itself provide justification for intervention and removal of children from their parents.<sup>127</sup> Before removal, the state's agents must examine the relative isolation and structure of the organization. They must then determine whether in the given case these factors make the danger of abuse substantially greater than in an ostensibly ordinary case. This test allows for special scrutiny of cult and commune cases in contravention of the parental interests the usual procedures protect. The test is justified by a policy that allows for error in the direction of protecting the physical safety of the child at the emergency phase.

1. *Isolation*— Isolation of families should influence the court's decision regarding whether to allow the Department to demonstrate reasonable cause for jurisdiction with evidence of harm to children outside of the child's household. Michigan law compels courts to protect children from abuse and neglect, and to do this, courts must have access to information about where and when abuse occurs. The legislature has attempted to meet this need by requiring certain professionals to report suspected child abuse and neglect.<sup>128</sup> Thus, the legislative child protection scheme depends, at least in part, upon the adequacy of opportunity to report these cases.

The isolation of the House of Judah interfered with Michigan's child protection scheme. The children in the camp neither attended school outside of the camp, nor visited doctors on a regular basis. In fact, the children were rarely seen outside of the camp.<sup>129</sup> Furthermore, the camp itself was located in a remote area that was not integrated with any other community.<sup>130</sup> By keeping the children from public scrutiny, this isolation interfered with the state's child protection scheme.

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126. See *supra* note 99.

127. The Juvenile Code requires a showing of neglect as to a particular child. A showing of neglect on the basis of membership in a cult or commune would presumably present first amendment freedom of association and religion problems.

128. MICH. COMP. LAWS ANN. § 722.623 (West Supp. 1985). This statute requires various professionals to report suspected abuse:

A physician, coroner, dentist, medical examiner, nurse, audiologist, certified social worker, social worker, social work technician, school administrator, school counselor or teacher, law enforcement officer, or duly regulated child care provider who has reasonable cause to suspect child abuse or neglect immediately . . . shall make an oral report . . . of the suspected child abuse or neglect to the [D]epartment.

129. Atkins interview, *supra* note 82. See Detroit Free Press, July 10, 1983, at A11.

130. Atkins interview, *supra* note 82.

The court must respond to such circumstances in a way that enables it to perform its function of protecting children. One response might be to increase public scrutiny by requiring children to visit doctors and attend public schools. But without the jurisdiction conferred by a prior finding of abuse or neglect, these actions would be too intrusive and probably unlawful.<sup>131</sup> Any relaxation of the standards for jurisdiction would have to be done by the legislature.

Another response to the isolation problem is to allow the state's agents to stretch the reasonable cause requirement to include persons outside of the abused child's household, as was done in *House of Judah*. This provides the court with an opportunity to scrutinize a more limited class of families who otherwise, because of their isolation, would be inscrutable, and yet regarding whom the type of suspicion contemplated by the reporting statute exists.<sup>132</sup> The protective discretion already authorized at the emergency stage makes relying on harm to non-family cult children a reasonable and acceptable way of responding to the problem of isolation.

2. *Structure*—Another important factor in a court's decision to stretch the reasonable cause requirement is the structure of the commune or cult. As part of its child protection scheme, the legislature has empowered the state's agents to remove a child from his home and take temporary custody when there is reasonable cause to believe that the child is abused or neglected.<sup>133</sup> In support of this policy, a court will permit a reasonable cause showing as to one child to support the removal from the same household of that child's siblings.<sup>134</sup> Thus, in enforcing the child protection scheme, courts have considered family structure a significant factor in determining whether there is reasonable cause to believe that a child is in danger.

The House of Judah camp appeared to have the structure of one family, and there was reasonable cause to believe that one child died as a result of abuse at the camp. Based upon the evidence available at the time of emergency removal, it appeared

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131. See *Stanley v. Illinois*, 405 U.S. 645, 658 (1971)(limiting state interference with parental rights prior to a finding of parental unfitness); Cf. *Meyer v. Nebraska*, 262 U.S. 390, 400-03 (1922)(invalidating a state law prohibiting the teaching of German to school children as being too great an infringement upon parents' right to control the education of their children).

132. The Juvenile Code requires various professionals to report when they have "reasonable cause to suspect child abuse or neglect." MICH. COMP. LAWS ANN. § 722.623(1) (West Supp. 1985).

133. See D. DUQUETTE, *supra* note 10, at 110-11.

134. See *supra* note 96 and accompanying text.

that authority and discipline within the camp were delegated and administered as if the camp were one family.<sup>135</sup> Prophet Lewis professed to have control and authority, and considered the group his family.<sup>136</sup> The presence of a family-like structure legitimated the concern that the children in the camp might have been endangered in the same way that the siblings of an abused child are endangered in a single household. Yet, in the forty-eight hours preceding the preliminary hearing, the state's agents could not have conducted a sufficient investigation to determine whether apparent similarities of cult to family actually presented sibling-like dangers to the other children. Thus, to provide the necessary protection to the children in the camp, the court was justified in allowing a showing of reasonable cause by reference to children outside of each child's household.<sup>137</sup>

*B. Preliminary Hearing and Beyond: The Requirements of Individualized Treatment*

Beyond the initial stages of investigation and emergency removal, treating the members of the commune as one family conflicted with the statutory policy. The Juvenile Code requires increased protection of the parents' interests in care and custody, and the child's corresponding interest in emotional well-being, once emergency removal has eliminated any immediate danger. Because these interests focus attention on the adequacy of particular parent-child relationships, the court must scrutinize individual parents and children to determine whether a child's home provides him with the minimally adequate nurturance and protection the Juvenile Code requires. It follows that the court in the *House of Judah* should have required from the state's agents allegations and proof based on investigation of each parent-child relationship.

1. *Petitions*— The petitions filed in *House of Judah* failed

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135. See *In re Children of the House of Judah*, File Nos. 2206-83 to 2210-83 (Preliminary Hearing, Allegan County P. & Juv. Ct., Mich., filed July 6, 1983). The court stated: "[P]reliminary evidence would indicate [that] you certainly have much more [control and authority] probably than the ordinary father in the family." *Id.* at 49.

136. See *id.* at 49. "The Court: '[This] particular group of people make up what it appears you consider as your total family.' Mr. Lewis: 'Yes, sir, right.'"

137. The statutory policy allowing for error on the side of overprotection at the emergency stage justifies reliance on mere appearance of family-like structure at this stage. Later in the proceedings, after the 48 hour deadline for the preliminary hearing has been met, the Juvenile Code requires more than mere appearance of a family-like structure.



to set forth facts and allegations specific to the named parties.<sup>138</sup> Nevertheless, the court authorized them. Although some courts might initially require more specific allegations,<sup>139</sup> the court's action in *House of Judah* would have been acceptable if the court had required the prosecutor to amend immediately the petitions to address more specifically the needs of, and dangers to, individual children.

In *House of Judah* the state's agents were faced with the enormous task of investigating sixty-six children and their parents in forty-eight hours. The Juvenile Code and Court Rules are not designed to require the Department to deal with this many children at one time. To relieve this tension created by an unrealistic standard, the court allowed the Department to file generalized petitions. This is justified under the same theory that justified the emergency removal of all sixty-six children. A petition, in one respect, merely announces the reasons for removal, or for the proposed removal, of a child from his home.<sup>140</sup>

A petition, however, also defines the boundaries and scope of the case. In *House of Judah* the Department never individualized the petitions, but instead, always treated the families as one group.<sup>141</sup> This group approach created problems in later stages of the case.<sup>142</sup>

2. *Prophet Lewis as "guardian" and the cult members as one "family"*— The court apparently used the term "guardian" to create and describe a position or relationship other than that contemplated by the Juvenile Code and Court Rules.<sup>143</sup> By grouping the families together as one family and appointing Prophet Lewis as guardian of all of the children, the court created a position and relationship that is not only unauthorized by, but is also inconsistent with, the statutory policy of individualized treatment. This policy protects the child's interest in emotional well-being and guards against improvident return of a child to an unsafe home. These interests are so important to Michigan's child protection scheme that potentially harmful deviations from the policy protecting them are unacceptable. Furthermore, this policy recognizes and protects the parents' rights to care and custody of their children.

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138. See *supra* notes 97-98 and accompanying text.

139. See *supra* note 99.

140. See *supra* note 14.

141. Atkins interview, *supra* note 82. Moreover, according to Atkins the state planned to argue the cases at the adjudicatory hearing as one case.

142. See *infra* Part IV.B.3.

143. See *supra* notes 109-11 and accompanying text.

The court's action may have even proved counterproductive by confusing the law's message to parents regarding their rights and responsibilities under the law. The law gives parents the right to, and holds them responsible for, raising and protecting their children. If they abuse this right or fail in this duty, the state ultimately may take custody of their children.<sup>144</sup> Naming Prophet Lewis guardian of the children and continuing to treat the camp as one family was inconsistent with this principle, because it may have suggested to the parents that Lewis was responsible for raising and protecting their children. This message must have at the least confused, and perhaps misinstructed, the very parents whom the legislature wanted to encourage to be protective. Thus, ironically, by encouraging the parents to defer even more to Prophet Lewis, the court's failure to require individualized treatment might have resulted in increased danger to individual children.

3. *Continued non-specific treatment: the failure to amend petitions*— Under Michigan law, before a court can approve the state's temporary custody of a child, it must require the state's agents to investigate the alleged case of abuse or neglect,<sup>145</sup> file a petition at a preliminary hearing,<sup>146</sup> and at that hearing show that there is reasonable cause to believe the allegations in the petition are true and that if proven would constitute neglect.<sup>147</sup> In *House of Judah* the court departed from these requirements.<sup>148</sup> At the emergency stage of the case these deviations were justified. The primary policy of the Juvenile Code requires protection of even possibly physically abused children, and the time constraints placed on the Department did not allow for investigation sufficient to determine if danger existed to all sixty-six children. After the emergency stage, however, the time constraint is not a justification for any continued deviation from the requirement of individualized treatment.

To fulfill Michigan's statutory policy the court in *House of Judah* should have taken three steps to remedy the procedural inadequacies. First, it should have required the Department to further investigate each child. Second, it should have required the Department to amend the initial petitions<sup>149</sup> based on the

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144. See MICH. COMP. LAWS ANN. § 712A.19a (West Supp. 1985).

145. See *supra* note 113.

146. See *supra* note 14.

147. See D. DUQUETTE, *supra* note 10, at 110-11.

148. See *supra* text accompanying notes 112-17.

149. MICH. COMP. LAWS § 712A.11 (1979) authorizes amendment of petitions in cases involving juveniles before the probate court.

individual investigations. Third, the court should have conducted a second or continued preliminary hearing to weigh the amended petitions and new evidence.

The proposed remedy would have been consistent with the statutory policy of allowing the Department authority to protect even possibly endangered children in the emergency phase,<sup>150</sup> but requiring a more carefully individualized approach in the later phases of the case.<sup>151</sup> Like the Juvenile Code, this remedy gives primary importance to protection of physical safety, but provides for examination of parents under the constraints of due process requirements shortly thereafter. And unlike the court's approach in *House of Judah*, it provides adequate protection to children who otherwise may face the risk of harm due to an improvident return to an unsafe home. Finally, this remedy is appealing on equitable grounds. It seems unfair to the parents to allow the prosecutor to permanently benefit from the unusual circumstances of communal living by not having to show later that actions taken with this extraordinary authority to remove were justified.

4. *Negotiating return of the children as a group*— The state's agents deviated from Michigan law and the principles of due process when they negotiated with the parents as a group for the return of their children. But even if the law does not specifically prohibit group negotiations, such an approach is inconsistent with the statutory policy of individualized treatment.

The failure to negotiate the return of the children on an individual basis was potentially harmful to the children's interests in both physical safety and emotional well-being. When the return of children is negotiated on a group basis it is probable, especially when the situation involves numerous families, that some of the households will be more unsafe than others. These households might have been deemed unsafe if judged on an individual basis. In its attempt to reach an agreement with the various families in the group, the Department might tolerate some deficiencies to which it normally would object. This lowering of standards could result in a child being returned to an unsafe home, contrary to the statutory policy that has as its highest priority the physical protection of the child.<sup>152</sup>

Additionally, group negotiation could interfere with some children's interests in emotional well-being by separating them from

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150. See *supra* text accompanying notes 52-56.

151. See *supra* text accompanying notes 112-15.

152. See *supra* text accompanying note 25.

a safe home. Just as some households are more unsafe than others, some households might be safer than others. There certainly will be some households in which, despite the influence of a figure like Prophet Lewis, individual parents will be adequately protective of their children. Although a child could be returned safely to such a home, he might not be because other households affected by the group agreement are too unsafe to allow return of children. Thus, a child may be separated from the custody and care of his parents for a longer period of time than is necessary to ensure his safety. This result would conflict with the statutory policy that also protects the child's interest in emotional well-being.<sup>153</sup> In sum, treating possibly abused children as a package rather than as individuals departs from the language and policy of the child protection statute, as well as from constitutional due process requirements. Although such an approach is justified in the face of the possible danger of immediate and unobservable physical harm, it loses its legitimacy once removal has eliminated that danger.

#### IV. PROPOSALS: IMPLEMENTING THE STATUTORY POLICY OF INDIVIDUAL TREATMENT

In the "ordinary" abuse and neglect case the Michigan Juvenile Code operates satisfactorily. The policy of individualized treatment sufficiently protects the child's interests in physical safety and emotional well-being and the parents' interest in care and custody of their child. Child abuse and neglect cases involving cults and communes, however, present special problems, and therefore, some departures from the statute are necessary. Drawing on the experiences of the participants in *House of Judah*, this Note proposes a set of procedures that seek to provide adequate protection for children living in cults and communes, without injuring unnecessarily the interests of both the parent and child in a continuing, stable relationship.

##### *A. Allowing Special Scrutiny and Emergency Removal of Children Living in Isolated Family-like Organizations*

The isolation and structure of an organization can affect the safety and welfare of a child, and therefore the child protection

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153. See *supra* notes 29-34 and accompanying text.

scheme requires evaluation of these important factors. A case involving a commune or cult, such as *House of Judah*, provides an example of a situation in which the isolation and structure of the organization increase the danger of abuse. The isolation and structure of an organization should influence a court's decision regarding whether to allow the state's agents to show reasonable cause for removal of one child based on evidence of harm to children outside that child's household. The policy allowing for error in the direction of protecting the physical safety of the child at the emergency stage justifies special scrutiny of cases such as *House of Judah*.

The legislative child protection scheme relies, at least in part, upon an adequate opportunity for people to report cases of suspected child abuse.<sup>154</sup> When children become isolated from public scrutiny, as they did in *House of Judah*, the court must respond in a way that enables it to perform its function of protecting children. The response taken in *House of Judah*, and the one proposed here, is to allow the state's agents to stretch the reasonable cause requirement to include persons outside the abused child's household. This enables the court to scrutinize a limited class of families who otherwise, because of their isolation, would remain inscrutable. The protective discretion already authorized at the emergency stage makes relying on harm to non-family member children living in the organization a reasonable and acceptable way of responding to the problem of isolation.

The degree to which an organization is structured like a family also should affect the court's decision to extend the reach of the reasonable cause requirement. One child in danger in a household will support the removal of that child's siblings from the household.<sup>155</sup> An organization with a familial structure may present the same sibling-like dangers.<sup>156</sup> At the emergency stage, if the state's agents cannot conduct a sufficient investigation, the appearance of a family-like structure will support removal. Again, the discretion authorized at the emergency stage legitimates the court's reliance on evidence of harm to non-family children living in the family-like organization to respond to the sibling-like dangers created by an organization with a familial structure.

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154. See MICH. COMP. LAWS ANN. § 722.623 (West Supp. 1985).

155. See *supra* note 96 and accompanying text.

156. See *supra* notes 135-37 and accompanying text.

*B. Requiring Amended Petitions And A Second or Continued Preliminary Hearing*

To relieve the pressure created when the state's agents had to investigate sixty-six children in forty-eight hours, the court in *House of Judah* accepted petitions that lacked specificity. This was an acceptable initial accommodation because it was consistent with the policy of allowing emergency removal of possibly endangered children, but it created problems because it set the boundaries for future proceedings<sup>157</sup> and legitimated the Department's group approach.

To resolve this tension and guide the state's agents in the transition from emergency use of their authority to remove, to deference to the other relevant interests, the court should require the Department to amend petitions soon after the preliminary hearing. Then, at a second or continued preliminary hearing the petitions must meet the requirements of specificity compelled by the statutory policy of individualized treatment. Requiring the Department to amend its petitions and undertake a second preliminary hearing would alleviate the problems created by an unrealistic time constraint because it would allow initial removal on the basis of a general petition. At the same time, however, it would encourage the Department to abandon its group approach and attend to the needs of individual children as early as possible, by forcing them to justify their earlier actions in court. Thus, the cases would be brought back within the standards of individualized treatment that the Juvenile Code and Juvenile Court Rules contemplate.

*C. Negotiating With Each Family Separately*

Consistent with treating each child separately, the state must treat each family separately. Permitting negotiation with the parents as a group for the return of the children infringes upon the rights and interests of both the parents and children.<sup>158</sup> No reason exists to *assume* identity with regard to the strengths, weaknesses, abilities, or needs of all families in a commune or cult.

Even in the unlikely event that all of the families in a com-

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157. See *supra* note 142 and accompanying text.

158. See *supra* text accompanying notes 118-23.

mune or cult are substantially similar, the state still retains an interest in requiring the court and Department to deal with each family separately. The law holds parents accountable for the health, safety, and welfare of their children, and treats children, parents, and families on an individual basis. The court and state's agents should make this approach and attitude clear to all parents, including those living in communes and cults. Thus, when negotiating with parents living in a commune or cult the state's agents should deal with them separately and explain to them their responsibility of securing and protecting the health, safety, and welfare of their child. Negotiating with the parents as a group confuses the law's message by giving parents the impression that the group or its leader has responsibility for their children.

### CONCLUSION

As part of its child protection scheme, Michigan has enacted the Juvenile Code. Based on a policy of individual treatment of children and parents, this statute protects both the child's interest in physical safety and emotional well-being and the parents' interests in custody and care of their children. The law achieves its goal of protecting both interests by granting broad emergency authority to the state's agents, but requiring shortly after the emergency that the state's agents follow procedures designed to limit continuing intervention to cases of necessity. The child's physical safety is always paramount. After the immediate danger is gone, however, the Juvenile Code requires that such necessity be determined by reference to the adequacy of nurturance and protection in individual parent-child relationships.

Child abuse and neglect cases that involve communes and cults, such as *House of Judah*, however, present special problems, and departures from the Juvenile Code may be necessary. This Note has proposed procedures for adapting the state's child protection scheme to these unusual circumstances. The proposed procedures allow special scrutiny and emergency removal of children living in isolated family-like organizations, require amended petitions and a second or continued preliminary hearing soon after the emergency removal, and require separate negotiations with each family regarding return of children. These procedures do not unnecessarily injure the interests the

Juvenile Code protects, and thus, are consistent with the state's child protection scheme.

—*Gregory M. Gochanour*



